

comparing the at least one token transmitted from the sender computer during the at least one additional transmission to the at least one token transmitted from the sender computer during the first secure transmission to determine whether the transmission is authentic; and

each time a first secure transmission is performed, the sender computer transmits to the receiver computer a selected value of N and N number of tokens to be used to authenticate the sender receiver computer;

the additional transmissions being variable and adaptively selected, at least in part, based upon a set of criteria that are used in an algorithm to determine the number of additional transmissions, the criteria being selected from a group consisting of the frequency of transmissions between the sender computer and the receiver computer, the closeness of the sender computer to the source of the transactions, and the usage patterns of the sender computer. - -

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### REMARKS

Reconsideration of this Application is respectfully requested. Claims 1-17, 19, 20 and 22 are amended. Claims 18 and 21 are cancelled, without prejudice or disclaimer. New claim 23 is added. Claims 1-17, 19, 20, 22 and 23 are in this case.

Initially, the Examiner rejected claims 1-13 and 18-22 under 35 U.S.C. § 101 on grounds that the claimed invention is directed to non-statutory subject matter. More particularly, the Examiner takes the position that claim 1 is non-statutory as not within the technological arts. He explains that Applicants' claims do not fall within the technological

arts because no form of technology is claimed.

Regarding claim 18, the Examiner recites the phrase, "...the number of additional transmissions is variable and adaptively selected". He then asserts that such is non-statutory subject matter on grounds that the claim is directed to a number, is merely an abstract idea and lacks a practical application. Similarly, the Examiner continues, the subsequent claims, i.e., claims 19-22, are non-statutory as they describe mathematical operations without some practical operation.

\* \* \* \* \*

Also, the Examiner rejected claims 4 and 18-22 under 35 U.S.C. § 112, second paragraph, for indefiniteness.

Specifically, with respect to claim 4, the Examiner recites the phrase, "...at least one transmission is greater than the preselected number of tokens". He then explains that if the "at least one" transmission is a single transmission, then the number of preselected tokens is zero, which, the Examiner says, contradicts claims 2 and 1 from which claim 4 depends.

Regarding claim 18, the Examiner continues, there is insufficient antecedent basis for the limitation, "the number of additional transmissions", in lines 1 and 2.

As for the remaining claims, namely, claims 19-22, the Examiner indicates that they are rejected as depending from rejected claim 18.

\* \* \* \* \*

Next, the Examiner rejected claims 1-3, 6-11, 14, 15 and 18 under 35 U.S.C. § 102(e) as being anticipated by Pickett, U.S. Patent No. 6,012,144. According to the Examiner, Pickett teaches a transaction security method and apparatus comprising the following steps:

(i) transmitting a token to a receiver during first secure transmission between a sender and a receiver (Abstract; Figure 4; and column 3, lines 50-52); (ii) establishing at least one additional transmission between the sender and receiver for transmitting the token, wherein the additional transmission is variable and adaptively selected (Figures 4 and 5; column 3, lines 50-54; and column 6, lines 22-35); (iii) comparing the tokens received during the transmission to establish authenticity (Figures 4 and 5; column 6, lines 23-35 and 64-67); (iv) wherein the at least one token comprises and corresponds to a preselected number of tokens (Figures 4 and 5); (v) conducting transmissions over unsecure or open connections (Figure 1); (vi) conducting an encrypted first secure transmission (Figures 3A-4; column 5, line 1 through column 6, line 23); and (vii) additional transmissions that are sent in plaintext (Figures 1 and 5; column 6, lines 22-35).

\* \* \* \* \*

Finally, the Examiner rejected claims 4, 5, 12, 13, 16, 17 and 19-22 under 35 U.S.C. § 103(a) as being obvious and, therefore, unpatentable over Pickett. More particularly, regarding claims 4, 5, 21 and 22, the Examiner argues that Pickett teaches a secure transaction method that comprises multiple transmissions and the exchange of token data (Figures 4 and 5). While the Examiner acknowledges that Pickett does not specify a particular number of additional transmissions, he asserts that it would have been obvious for a user to register multiple cards but only make one purchase using the service of Pickett, or to register one card and make multiple purchases using the one card. Similarly, the Examiner continues, as the number of additional transactions of the Pickett system is variable, the number can be ascertained mathematically (i.e., deterministically), or at least statistically, or

probabilistically. The Examiner states further that the choice of independent variables used to model the behavior of said variable is at the discretion of the practitioner.

With respect to claims 12, 13, 16 and 17, the Examiner takes the position that Pickett teaches transmitting data electronically (Figures 1-5). The Examiner takes Official Notice that checksums are well known computational tools for detecting the presence of errors when data is transmitted over a network. The Examiner then concludes that it would have been obvious to one having ordinary skill in the art to use “checksums” to detect errors during the transmission of sensitive data such as credit card numbers.

As for claims 19 and 20, the Examiner has determined that Pickett teaches a secure transaction method that comprises additional transmissions to a client (Figure 5). With regard to the number of additional transmissions, the Examiner finds that it would have been obvious for a user to decline using the system of Pickett, or at least a particular website (i.e., ABC Toy Company), (Figure 5) in the future if the user was dissatisfied with the service.

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During an Interview with Examiner Hewitt on November 5, 2003, independent claim 1 and dependent claims 18 and 21 were discussed with reference to Pickett and a new art being made of record, namely, Bezos et al., U.S. Patent No. 5,960,411, as proffered by the Examiner. Pursuant to the Interview, Applicants have amended claim 1, cancelled claims 18 and 21, and added new claim 23.

First, claim 1 is amended to clarify that the sender and receiver each relate to a “computer” and, therefore, constitute statutory subject matter under 35 U.S.C. § 101. Accordingly, Applicants respectfully request that the rejection under § 101 be withdrawn. In

this connection, Applicants have also undertaken to amend claims 14 and 16 to clarify that the client also relates to a computer.

Next, claim 1 is amended to incorporate language set forth generally in the Specification, on page 28, lines 3-8, to define the number of tokens as N and to clarify that each time a first secure transmission is performed, the sender computer transmits to the receiver computer a selected value of N and N number of tokens to be used to authenticate the sender computer. It is noted, in this connection, that Applicants have undertaken to amend the Specification for purposes of clarification, consistency and grammar, from the first full paragraph on page 28 through the first full paragraph on page 29. More particularly, the Specification is amended to clarify that the number of tokens N is a variable, and that because both M and N are variables, the use of M in the Specification is considered unnecessary. "N" is, therefore, substituted for "M" throughout. Applicants have also inserted appropriate "if-then" clauses, e.g., replacing "than" with - - then - -; changed "logged in" to - - logged on - -; and deleted "particular" from the phrase "this particular client" and "its" from "its anticipation" as redundant. In this manner, Applicants respectfully submit that the invention has been better defined, in accordance with the Examiner's directives. Applicants respectfully state that no new matter has been added.

Also, new claim 23 is added by Applicants, which combines language from amended claim 1 above with the limitations of cancelled claims 18 and 21, such limitations being similarly set forth in the amended Specification, on page 28, lines 9-21 et seq.

Furthermore, as the language of independent claim 14 is directed to a method for securely transferring data between a client computer and a server over an open network with

the same general claim elements as original claim 1, Applicants have undertaken to amend that claim in a manner and for reasons similar to that done with amended claim 1. In addition, claims 4, 14, 19 and 20 are amended for grammatical correctness, namely, changing "then" to - - than - -; deleting "number of" as redundant; changing "transmitted token" to - - token transmitted - -; and "is" to - - are - -.

Finally, dependent claims 3-13, 15-17, 19, 20 and 22 are amended voluntarily to change "according to" to - - set forth in - - as a matter of desired style.

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Applicants, therefore, respectfully submit that none of the cited references, taken alone or in any combination, disclose or suggest their invention, as claimed.

Based on the foregoing, withdrawal of the Examiner's rejections under §§ 101, 112, second paragraph, 102(b) and 103(a) are respectfully requested.

Applicant has made a good faith attempt to place this Application in condition for allowance. Favorable action is requested. If there is any further point requiring attention prior to allowance, the Examiner is asked to contact Applicants' counsel at (212) 768-3800.

Please charge any additional fees that may be required to our firm Deposit Account

No. 50-0518.

Respectfully submitted,

Dated: December 30, 2003


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